

Complaint

52 F. T. C.

IN THE MATTER OF
ABE MARKS TRADING AS SUMLAR COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6407. Complaint, Aug. 24, 1955—Decision, Jan. 10, 1956

Consent order requiring a seller in Brooklyn, N. Y., to cease advertising falsely in newspapers, etc., that a drug product designated "Vertasol" was a reliable treatment and cure for all kinds of arthritis, rheumatism, and neuritis; would relieve the pain of such conditions; was a new formula, with its effectiveness verified by clinical tests; and that all the ingredients had analgesic and therapeutic value.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Charles S. Cow for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Abe Marks, an individual trading as Sumlar Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Abe Marks, is an individual trading as Sumlar Company, with his office and principal place of business located at 3120 Tilden Avenue, Brooklyn 26, New York.

PAR. 2. Respondent is now, and has been for more than nine months last past, engaged in the business of selling and distributing a certain drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for said product, and the formula and direction for use thereof are as follows:

Designation: Vertasol.

Formula: "Each tablet contains—

Active ingredients:

Salicylamide 2 gr.;

Sodium Salicylate 2½ gr.;

Caffeine, ⅛ gr.

Inactive ingredients:

Potassium Salicylate ½ gr.;

Niacin 5 mg."

660

Complaint

Directions: "Adults: 3 tablets 4 times daily taken with water before meals and at bedtime or as directed by physician. Dosage may be decreased to 2 tablets 4 times daily if acute symptoms have subsided. Do not exceed 12 tablets in 24 hours."

PAR. 3. Respondent causes said product, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning Vertasol by United States mail, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and other advertising literature, for the purpose of inducing and which were likely to induce directly or indirectly the purchase of said product; and respondent has disseminated and caused the dissemination of advertisements by various means, including but not limited to the aforesaid means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of Vertasol in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations, contained in said advertisements disseminated and caused to be disseminated by the United States mails, by insertion in newspapers and other advertising literature are the following:

A R T H R I T I S
RHEUMATISM SUFFERERS

Find New Curb For Pain

Users Rejoice—Supply Rushed Here

Victims of crippling arthritis, rheumatism and neuritis pain can take joyous new hope from announcement of dramatic success with a new formula which combines 4 drugs into one tablet capable of relieving agonizing pain in joints and muscles. According to clinical reports, this new compound, called VERTASOL, acts internally to curb tortuous arthritis, rheumatism, neuritis pain in back, hands, arms, legs and shoulders yet is safe to take, requires no prescription. With tears of joy in their eyes, men and women who formerly suffered dread stabbing torture of arthritis and rheumatism pain in swollen joints and muscles now tell of blessed relief after using it.

Complaint

52 F. T. C.

VERTASOL costs \$3.00 but considering results is not expensive, is only pennies per dose. Sold with money back guarantee by

ALL GROVE DRUG STORES

Mail Orders Filled

PAR. 5. Through the use of the said advertisements, respondent has made, directly and by implication, the following representations shown in the following subparagraphs identified as (A) through (F), inclusive. The said advertisements, by reason of the said representations, are false and misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act by reason of the true facts which are set forth in subparagraphs (1) to (6), inclusive.

(A) That Vertasol is an adequate, effective, and reliable treatment for all kinds of arthritis, rheumatism, and neuritis.

(1) Vertasol, however taken, is not an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, or neuritis.

(B) That Vertasol will arrest or curb the progress of, will correct the underlying causes of, and will cure arthritis, rheumatism and neuritis.

(2) Vertasol, however taken, will not arrest or curb and cure arthritis, rheumatism, and neuritis, nor will it correct the underlying causes of same.

(C) That Vertasol will afford blessed relief of dread stabbing torture of arthritis and rheumatism pain in swollen joints and muscles, and will curb the pain of crippling arthritis, rheumatism and neuritis.

(3) Vertasol, however taken, will not afford relief from stabbing torture of arthritis and rheumatism pain in swollen joints and muscles nor will it curb the pain of crippling arthritis, rheumatism and neuritis, and at best will only afford temporary relief of minor aches, pains and fever in cases of arthritis, rheumatism, and neuritis.

(D) That Vertasol is a "new formula which combines four drugs into one tablet capable of relieving agonizing pains in joints and muscles."

(4) Vertasol is not a new formula and only three of the ingredients therein are capable of exerting any analgesic activity, and these ingredients have been used many times in the past for pain dulling action; furthermore, Vertasol is not capable of relieving agonizing pain in joints and muscles.

(E) That Vertasol's effectiveness has been verified and substantiated through clinical tests performed therewith and reports made thereon.

(5) Respondent has had no clinical tests made with Vertasol and the claimed or purported effectiveness of Vertasol when used as directed is not supported by clinical tests.

(F) That all the ingredients in Vertasol have therapeutic value in the treatment of arthritis, rheumatism, neuritis or symptoms thereof.

(6) The caffeine and niacin in the formula for Vertasol are devoid of any analgesic properties and have no therapeutic value for any kind of arthritis, rheumatism, neuritis, or symptoms thereof.

PAR. 6. The use by respondent of the said advertisements with respect to Vertasol has had the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true and into the purchase of substantial quantities of Vertasol by reason of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The Federal Trade Commission issued its complaint in this proceeding on August 24, 1955, charging the respondent, Abe Marks, an individual trading as Sumlar Company, with violation of the Federal Trade Commission Act in the sale and distribution of a drug product designated "Vertasol," the specific charges being misrepresentations and false and misleading advertisements concerning the therapeutic and analgesic effects of his aforescribed product in the treatment of arthritis, rheumatism and neuritis.

After the issuance of said complaint the respondent entered into an agreement for consent order with counsel in support of complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or con-

Order

52 F. T. C.

clusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondent further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission.

Said agreement further recites that the respondent, Abe Marks, is an individual trading under the firm name and style of Sumlar Company, with his office and principal place of business located at No. 3120 Tilden Avenue in the Borough of Brooklyn, State of New York.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Commission's Rules of Practice, and consonant with the terms of said agreement, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein and that this proceeding is in the interest of the public wherefore the following order is issued:

ORDER

It is ordered, That the respondent Abe Marks, individually and trading as Sumlar Company, or under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Vertasol" or any product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

630

Decision

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication:

(a) that the taking of said preparation will constitute an adequate, effective, or reliable treatment for any kind of arthritis, rheumatism, or neuritis;

(b) that said preparation will arrest or curb the progress of, correct the underlying causes of, or cure any kind of arthritis, rheumatism or neuritis;

(c) that said preparation will afford relief of the severe pains of arthritis, rheumatism or neuritis or have any therapeutic effect upon any of the symptoms or manifestations of any such condition in excess of affording temporary relief of minor aches, pains or fever;

(d) that said preparation is a new formula;

(e) that said preparation's effectiveness has been verified or substantiated through clinical tests;

(f) that the caffeine and niacin in said preparation have analgesic properties.

2. Disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in Paragraph One hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of January, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Complaint

52 F. T. C.

IN THE MATTER OF

MILNER PRODUCTS COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6268. Complaint, Dec. 22, 1954—Decision, Jan. 11, 1956*

Consent order requiring manufacturers in Jackson, Miss., to cease advertising falsely in newspapers and magazines and by radio and television that their disinfectant "Pine-Sol" was more concentrated and contained more active ingredients than any other pine oil product, that a few drops would sanitize garbage cans and keep them sweet smelling, and that the product was not a soap or detergent.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. Richard L. Underwood, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Milner Products Company, a corporation, and R. E. Dumas Milner, Howard S. Cohoon and Thurman L. Pitts, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Milner Products Company is a corporation organized and existing under and by virtue of the laws of the State of Mississippi, with its office and principal place of business located at 4349 N. View Drive, Jackson, Mississippi.

Respondents R. E. Dumas Milner, Howard S. Cohoon and Thurman L. Pitts are officers of corporate respondent. These individuals formulate, direct and control the policies, acts and practices of corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. The respondents are now and for more than one year last past have been engaged in the manufacture, sale and distribution of a disinfectant designated by them as "Pine-Sol," the formula of which is: